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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

ANTHONY LENAIRE CURRY,

Petitioner - Appellant,

v.

JOAN PALMATEER, Superintendent,
Oregon State Penitentiary,

Respondent - Appellee.

No. 01-35949

D.C. No. CV-99-00616-CO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Argued and Submitted November 6, 2002
Seattle, Washington

Before: REAVLEY,** KOZINSKI and W. FLETCHER, Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Honorable Thomas M. Reavley, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

Even if the district court erred in finding procedural default (which we do not decide), we nonetheless affirm on the merits because the 1995 amendment to Oregon Revised Statutes (O.R.S.) § 137.370 merely codified pre-existing Oregon case law, which clearly held that O.R.S. § 137.370(2)(a) does not authorize credit for pre-sentence time served on an unrelated sentence. *See Chambers v. Maass*, 758 P.2d 393, 393-94 (Or. Ct. App. 1988). The petitioner’s attempt to distinguish *Chambers* on the ground that it involved consecutive sentences is unavailing; *Chambers* did not turn on whether the sentences were consecutive, but on whether the “time spent in custody [was] the *result* of the [instant] charge.” *Id.* at 393 (internal quotation marks omitted). *See also Nissel v. Pearce*, 764 P.2d 224 (Or. 1988); *Randolph v. Oregon Dept. of Corr.*, 910 P.2d 1171 (Or. Ct. App. 1996). Chamber’s sentences, like Curry’s sentences here, simply fit within that general rule.

AFFIRMED.